



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2022-0439; FRL-9870-01-R9]

#### Air Plan Approval; California; San Diego County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Diego County Air Pollution Control District's (SDCAPCD or District) portion of the California State Implementation Plan (SIP). This revision concerns a volatile organic compound (VOC) rule covering transfer of organic compounds into mobile transport trucks and a negative declaration for non-Control Techniques Guidelines (CTG) major VOC sources. We are proposing to approve the local rule to regulate these emission sources under the Clean Air Act (CAA or the Act) and the negative declaration. We are taking comments on this proposal and plan to follow with a final action. Elsewhere in this *Federal Register*, we are making an interim final determination to defer CAA sanctions associated with our previous disapproval action concerning the CTG categories addressed by the rule and negative declaration.

**DATES:** Comments must be received on or before [Insert date 30 days after date of publication in the *Federal Register*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0439 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is

considered the official comment and should include discussion of all points you wish to make.

The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Donnique Sherman, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4129 or by email at [sherman.donnique@epa.gov](mailto:sherman.donnique@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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## **I. The State’s Submittal**

- A. *What documents did the State submit?*

Table 1 lists the submissions addressed by this proposal with the dates they were adopted or amended by the local air agency and submitted by the California Air Resources Board

(CARB) to the EPA.

TABLE 1 - SUBMITTALS

Local Agency	Document Title	Adopted /Amended	Submitted
SDCAPCD	Rule 61.2 Transfer of Organic Compounds into Mobile Transport Tanks	02/10/2021	04/20/2021
SDCAPCD	2020 Reasonably Available Control Technology (RACT) Demonstration for the National Ambient Air Quality Standards for Ozone in San Diego County, October 2020 – <i>Negative Declaration for Non-CTG Major VOC Sources</i>	10/14/2020	12/29/2020

Under CAA section 110(k)(1), the EPA must determine whether a SIP submittal meets the minimum completeness criteria established in 40 CFR part 51, appendix V for an official SIP submittal on which the EPA is obligated to take action. If the EPA does not make an affirmative determination of completeness or incompleteness within six months of receipt of a SIP submittal, the submittal is deemed to be complete by operation of law. The submittals listed in Table 1 were deemed complete by operation of law on October 20, 2021 (Rule 61.2) and June 29, 2021 (SDCAPCD's negative declaration).

B. *Are there other versions of these documents?*

We approved a previous version of Rule 61.2 (locally amended on July 26, 2000) into the California SIP on August 26, 2003 (68 FR 51186). The SDCAPCD adopted revisions to the SIP-approved version on February 10, 2021, and CARB submitted them to us on April 20, 2021. If we take final action to approve the February 10, 2021 version of Rule 61.2, this version will replace the previously approved version of this rule in the SIP.

We approved portions of the RACT SIP and negative declarations on December 3, 2020 (85 FR 77996), not including the negative declaration for non-CTG major VOC sources because

the SDCAPCD had not formally adopted it. The SDCAPCD formally adopted the negative declaration for non-CTG major VOC sources on October 14, 2020, and CARB submitted it to us on December 29, 2020.

C. *What is the purpose of the submitted documents?*

Emissions of VOCs contribute to the production of ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as Moderate or above implement RACT for any source covered by Control Techniques Guidelines (CTG). The SDCAPCD is subject to this requirement as it regulates an ozone nonattainment area that, at the time it prepared the original submittal for the negative declaration and Rule 61.2, was designated and classified as a Moderate nonattainment area for the 2008 8-hour ozone NAAQS. Therefore, the SDCAPCD must, at a minimum, adopt RACT-level controls for all sources covered by a CTG document and for all major non-CTG sources of VOCs within the ozone nonattainment area that it regulates. Any stationary source that emits or has the potential to emit at least 100 tons per year (tpy) of VOCs or NO<sub>x</sub> is a major stationary source in a Moderate ozone nonattainment area (CAA section 182(b)(2), (f) and 302(j)).

On December 3, 2020 (85 FR 77996), the EPA partially disapproved the SDCAPCD's 2008 RACT SIP demonstration for the source category covering the CTG for "Control of Hydrocarbon from Tank Truck Gasoline Loading Terminals" (EPA 450/2-77-026) (Tank Truck Gasoline Loading CTG). The EPA's technical support document (TSD) for the proposal (August 10, 2020, 85 FR 48127) states that, "...Rule 61.2 sets a limit of 0.29 lb/1000 gallons for transfers at bulk terminals. We determined that Rule 61.2 did not meet current RACT for tank truck loading at bulk terminals. This limit is higher than the emissions limit in nearly every nonattainment area in California, and in a number of nonattainment areas outside California." In addition, our partial disapproval of SDCAPCD's 2008 RACT SIP also included a disapproval of

the District's RACT demonstration for non-CTG major sources of VOCs. The District had not formally adopted a negative declaration for non-CTG major VOC sources.

On December 29, 2020, CARB submitted to the EPA the SDCAPCD's 2015 RACT SIP, which includes a negative declaration adopted for non-CTG major VOC sources for the 2008 RACT SIP which corrects the deficiency in EPA's 2020 disapproval action for the non-CTG major VOC source category. On April 20, 2021, CARB submitted to the EPA amended Rule 61.2 that included a decrease in emission limit for bulk terminals to 0.08 pound per 1000 gallons, which corrects the deficiency in EPA's 2020 disapproval action for the Tank Truck Gasoline Loading CTG category. The EPA's TSD has more information.

## **II. The EPA's Evaluation and Action**

### *A. How is the EPA evaluating the submitted documents?*

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require reasonably available control technology (RACT) for each category of sources covered by a CTG document as well as each major source of VOCs in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The SDCAPCD regulates an ozone nonattainment area that is currently classified as a "Severe" nonattainment area for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS).<sup>1</sup> Therefore, this rule must implement RACT. Our action evaluates whether Rule 61.2 implements RACT for the Tank Truck Gasoline Loading CTG source category.

States must submit for SIP approval negative declarations for those source categories for which they have not adopted CTG-based regulations (because they have no sources above the

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<sup>1</sup> 86 FR 29522 (June 2, 2021)

CTG-recommended applicability threshold) regardless of whether such negative declarations were made for an earlier SIP.<sup>2</sup> The submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist in the portion of the ozone nonattainment area that is regulated by the SDCAPCD. Our action evaluates the negative declaration for non-CTG major VOC sources.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals," EPA-450/2-77-026, October 1977.
5. "Control of Volatile Organic Emissions from Bulk Gasoline Plants," EPA-450/2-77-035, December 1977.
6. "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems," EPA-450/2-78-051, December 1978.

B. *Do the documents meet the evaluation criteria?*

This rule and negative declaration are consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions. Specifically, the rule requirements sufficiently ensure that affected sources and regulators can consistently evaluate and determine

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<sup>2</sup> 57 FR 13498, 13512 (April 16, 1992).

compliance. Additionally, our analysis finds that Rule 61.2 represents current RACT for the Tank Truck Gasoline Loading CTG because the rule is as stringent as the CTG and is generally consistent with requirements in other air districts for tank truck gasoline loading at bulk terminals. In addition, our analysis of the District's negative declaration determined that there are no non-CTG VOC sources that exceed the 100 tpy VOC threshold for Moderate ozone nonattainment areas. The Technical Support Document (TSD) has more information on our evaluation.

C. *The EPA's recommendations to further improve the submitted rule*

The TSD includes a recommendation for the next time the local agency modifies the Rule 61.2.

D. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted Rule 61.2 because it fulfills all relevant requirements. In addition, the EPA proposes approval of the submitted negative declaration for non-CTG major VOC sources for 2008 RACT SIP Moderate area requirements. We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the *Federal Register*]**. If we take final action to approve the submitted rule and negative declaration, our final action will incorporate this rule into the federally enforceable SIP and stop the sanctions and FIP clocks that are associated with our previous disapproval.

### **III. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference SDCAPCD Rule 61.2, "Transfer of Organic Compounds into Mobile Transport Tanks" as amended on February 10, 2021. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER**

**INFORMATION CONTACT** section of this preamble for more information).

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);



- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: **May 31, 2022.**

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

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